



DEPARTMENT OF THE NAVY
OFFICE OF THE ACADEMIC DEAN AND PROVOST
UNITED STATES NAVAL ACADEMY
589 MCNAIR ROAD
ANNAPOLIS MARYLAND 21402-1323

HRO-18-DL-15
15 AUG 2018

From: Academic Dean and Provost
To: Dr. Bruce Fleming, Professor AD-1710-07

Subj: NOTICE OF DECISION ON PROPOSED REMOVAL

Ref: (a) 5 CFR 752
(b) SECNAVINST 12752.1A dated 3 MAY 16
(c) Faculty Misconduct Inquiry dated 18 MAY 18
(d) Notice of Proposed Removal dated 26 JUN 2018
(e) ACDEANINST1531.63C dated 1 APR 16

Encl: (1) Merit Systems Protection Board Appeals Form

1. Pursuant to reference (a) and (b), this is a notice that I have decided to remove you from your position and federal service effective 17 August 2018. This decision is made to promote the efficiency of the service and is based on the following Reasons and Specifications as stated in the Notice of Proposed Removal (reference d):

2. Charge: Conduct Unbecoming a Federal Employee

Specifications.

During the fall semester of the Academic Year 2017-2018, you engaged in unprofessional conduct in the classroom and outside the classroom. Your conduct included, but is not limited to: (1) referring to students as "right-wing extremists," and/or words to that effect; (2) classroom comments/discussion regarding anal sex, oral sex, and transgender surgery; (3) emailing partially clothed pictures of yourself to students after having been counseled that doing so was inappropriate and your agreement not to do so in the future; (4) touching students without their approval; (5) referring to your own sexual experiences; (6) repeatedly mispronouncing an Asian-American student's name despite being corrected several times by the student; and (7) making demeaning sexually related comments about a young woman attending a dance with your son and similar offensive comments about the young woman's mother. See reference (d).

The investigating panel's final report (reference c) supported the charges and specific misconduct cited in the specifications above. In your response to the panel's report, you made it clear that you do not accept responsibility for these actions. You either dispute that they occurred, or you argue that you are within your rights to engage in these activities. In his Notice of Proposed Removal (reference d), the Proposing Official (COL Aytes) writes:

FOR OFFICIAL USE ONLY PRIVACY SENSITIVE

Any misuse or unauthorized disclosure can result in both civil and criminal penalties

“I have carefully considered proposing a lesser form of disciplinary action to include a long-term suspension. However, given the serious nature and multiple instances of inappropriate classroom conduct, the complete disregard for the Department Chair’s counseling [sic], and refusal to even acknowledge any responsibility, I have no reason to believe that any penalty, short of removal from the Federal service, will change your behavior. I propose that the Deciding Official find that rehabilitation is unlikely.”

In the written reply to the Notice of Proposed Removal, you claim that you are being unjustifiably punished for articles you have published, and that you are being denied your academic freedom to use “theatrical and provocative” teaching methods. I do not agree; I find nothing in the record that supports your claim. It is apparent that you do not find any aspect of your behavior to be inappropriate for a federal employee, and you offer no intention to alter any aspect of your behavior. Pertinent to this point, the Proposing Official also writes in his Notice of Proposed Removal:

“I also request that the Deciding Official consider that the adequacy and effectiveness of alternative sanctions appears not to be present to deter similar conduct in the future given (1) the close proximity between the September 2015 counseling regarding the sharing of pictures and its reoccurrence in September 2017 and (2) the unauthorized disclosure of personal information of a former student in April 2018 in an effort to defend your current misconduct.”

3. I have carefully considered all of the information contained in the Notice of Proposed Removal along with its supporting documentation, and the supplemental information you provided in your 3 July 2018 written reply. Based on my review, I find that the reasons and specifications contained in the Notice of Proposed Removal are supported by the record. To reach my final decision, I have considered the following factors:

a. The nature and seriousness of the offense, and its relation to employee’s duties, position, and responsibility, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

The Proposing Official determined in his Notice of Proposed Removal that the “inquiry revealed serious intentional misconduct both in the classroom setting, and in emails to your students.” In your written response to the investigating panel, you made it clear that your conduct was intentional, and you do not see any fault in your behavior. The investigating panel confirmed your unprofessional behavior with respect to all of the complaints listed in the specification above, and they further determined that such behavior was repeated on multiple occasions. As a result, the Proposing Official determined that “your conduct was inappropriate and unprofessional in the federal workplace, and especially egregious given your position as a senior member of the faculty.” I concur with the Proposing Official, and find this to be an aggravating factor in my determination of the appropriate penalty.

b. The employee's job level and type of employment, including supervisory or fiduciary role contacts with public, and prominence of the position.

Your position requires you to play a vital role in the education and professional development of future Navy and Marine Corps leaders. In this role, it is crucial that you provide a positive and supportive classroom environment in which midshipmen may focus on their education. You are in a senior level faculty position and are expected to be a role-model to midshipmen in that developmental process. As the Proposing Official writes in his Notice of Proposed Removal, "it is critical that you establish and maintain a classroom environment that respects the dignity of the individual and develops an understanding and appreciation for an appropriate superior-subordinate relationship. Your conduct during the fall of 2017 fell well short of this mark." The investigating panel report similarly states that "Instructors have an asymmetric relationship with their students. Simply saying 'no' or 'please stop' or 'you're making me uncomfortable' is not often a realistic option for students. The best practice is to refrain from touching students altogether beyond a handshake in keeping with a professional atmosphere and relationship." In fact, several of the student complaints against you specifically highlight the inappropriate nature of this unwanted touching. Due to the job level and the nature of your offenses, I concur with the Proposing Official, and find this to be an aggravating factor in making my determination of the appropriate penalty.

c. The employee's past disciplinary record, past work record, length of service, performance on the job, and ability to get along with others and dependability.

You have been a faculty member for over 30 years, your official performance has been rated as satisfactory, and you received performance awards in the 1990's. I concur with the Proposing Official, and consider this to be a potentially mitigating factor. However, since 2013 you have engaged in behaviors that are unacceptable.

Specifically, since 2013 there have been two instances of formal counseling (one involving inappropriate photos of yourself, and one resulting from the formal complaint filed by a midshipman) conducted at the Department level as well as two formal letters of reprimand (one in 2014 and one in 2018) issued from the HUM/SS Division regarding your inappropriate professional behavior during that period. As the Proposing Official cites in the Notice of Proposed Removal, in your official personnel file now is a letter of reprimand regarding an intentional PII violation by you, a disclosure made by you by email to all faculty at USNA and that was specifically targeted at a midshipman, the same midshipman who had previously filed a formal complaint against you. That student complaint was investigated and resulted in formal counseling of you at the Department level, and yet you continue to reject any responsibility for your actions in that case, and chose to share his federally protected information with all faculty as a means to defend yourself during this investigation. In summary, the extent of your *disciplinary* record compiled since 2013 is unacceptable, and outweighs your satisfactory official performance record. I concur with the Proposing Official, and find this to be an aggravating factor in making my determination of the appropriate penalty.

d. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

As the Proposing Official cites in his Notice of Proposed Removal, in a 2015 formal counseling by your Department Chair, you were directed to refrain from sending partially-clothed photos of yourself to students. As confirmed by the investigating panel's report and in spite of your claims to the contrary, you repeated this behavior in the fall of 2017. As noted in the investigating report, "Dr. Fleming states that this behavior occurred only a single time two years ago, yet the interview statements and email documentation clearly contradict this assertion." That report further states that "the panel finds sending shirtless photographs to be outside the accepted standards of professional conduct for a faculty member." This is precisely what you were counseled and directed in 2015 not to do. I concur with the Proposing Official, and find this to be an aggravating factor in making my determination of the appropriate penalty.

e. The notoriety of the offense or its impact upon the reputation of the Agency.

To date, your actions are not widely known outside of the Naval Academy, and have not had an impact on the reputation of the Naval Academy. However, you have used Naval Academy email distribution lists several times to make your actions and rebuttals known broadly within the Naval Academy. I concur with the Proposing Official, and find this to be a neutral factor in making my determination of the appropriate penalty.

f. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties.

In his Notice of Proposed Removal, the Proposing Official enumerated a subset of the original complaints made against you by students in your fall 2017 classes. While each of the complaints he listed was confirmed by the investigating panel, the most serious are touching midshipmen in class without their consent, and emailing several partially clothed photos of yourself to your class after having been formally counseled and directed not to do so. To be clear, the midshipmen who formally complained found this behavior to be inappropriate and unwanted, and the investigating panel and the Proposing Official agree. And yet, you reject the assertion that your touching of midshipmen is inappropriate, and you deny that you emailed any photos of yourself, in spite of clear evidence that you did so. In addition, you identified a current midshipman and former student of yours by name when you provided federally protected information about him in an email to all faculty at USNA. That midshipman is the same student who had previously filed a formal complaint against you in 2016. In each of these instances, you have rejected any responsibility for your actions, and you have made clear in your written responses to the investigating panel, to its final report, and to the Notice of Proposed Removal that you are entitled to continue this behavior. Given this set of facts, I do not have confidence that you will perform at a satisfactory level in the future. I concur with the Proposing Official, and find this to be an aggravating factor in making my determination that removal is the appropriate penalty.

g. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

I am unaware of any similar misconduct by a faculty employee. I concur with the Proposing Official, and find this to be a neutral factor in making my determination of the appropriate penalty.

h. Consistency with table of penalties from SECNAVINST 12752.1A and the Department of the Navy Civilian Human Resource Manual (CHRM) Subchapter 752 Disciplinary Actions

The recommended range of remedies for a similar offense of inappropriate conduct of a federal employee ranges from Reprimand to Removal. I concur with the Proposing Official, and find this to be a neutral factor in making my determination of the appropriate penalty.

i. The potential for the employee's rehabilitation and the adequacy and effectiveness of alternative sanctions.

Since 2013 you have been formally counseled twice at the Department level, and have received two letters of reprimand at the Division level. Your written responses to the investigating panel and to the Notice of Proposed Removal clearly indicate that you do not see anything inappropriate in your conduct, and you reject responsibility for anything that could be considered inappropriate. In some instances, you assert that the events did not even occur, and yet the evidence is clear (e.g. the inappropriate photos you sent, and your inappropriate touching of students) that they did. You have shown no evidence that rehabilitation or a lesser sanction would be effective; indeed, such sanctions have not been effective to date. In his Notice of Proposed Removal, the Proposing Official writes that "given the serious nature and multiple instances of inappropriate classroom conduct, the complete disregard for the Department Chair's counselling [sic], and refusal to even acknowledge any responsibility, I have no reason to believe that any penalty, short of removal from the Federal service, will change your behavior." I concur with the Proposing Official, and find this to be an aggravating factor in making my determination of the appropriate penalty.

4. In accordance with reference (e), you may appeal this decision to the Superintendent or his designee within 10 working days of receiving this notice.

5. You have the right to appeal this decision to the Merit Systems Protection Board (MSPB). If you choose to appeal this removal decision to the MSPB, you may file your appeal any time after the effective date of the action, but not later than thirty (30) calendar days after the effective date. If you choose to file an appeal, it may be done on-line at:

<https://e-appeal.mspb.gov/Default.aspx>, by personal delivery during normal business hours to the MSPB, by facsimile, or by mail addressed as follows:

Regional Director
Merit Systems Protection Board (MSPB)
Northeast Regional Office
1601 Market Street, Suite 1700
Philadelphia, PA 19103

6. If you believe that this adverse action discriminates against you on the basis of your race, color, religion, sex, national origin, age, or disability you may contact the EEO Office at 410-293-3558 to file a complaint. If you choose to file an EEO complaint, you will have no other means of appeal. To summarize, you may appeal this decision to the MSPB in accordance with enclosure 1, or you may file a discrimination complaint, but can only select one (1) of the above options with no other redress. Whichever appeal is filed first will be considered an election to proceed in that forum.

7. If you need further information regarding your rights in this matter, you may contact Ms. Alaina Kistler of the Human Resources Office, telephone [REDACTED]



Andrew T. Phillips
Academic Dean & Provost

8/15/18

Date

Receipt Acknowledged:

Signature

Date

Post-Employment Instructions, USNA HR

Please immediately contact your Department Chair to provide time & attendance information for the week of 13-17 August 2018. Leave must be requested and approved prior to the end of the pay period, or you will be carried in an Absent Without Leave (AWOL) status from 13-17 August 2018. If you performed Government work during this past week, please attest to your time via the Department Chair.

Within 5 business days, please contact Joe Parks at [REDACTED] to coordinate a time to drop off the following in Halligan Hall:

- 1) Common Access Card (CAC)
- 2) Any Library materials, InterLibrary Loans, or Faculty Study Keys
- 3) Any USNA keys in your possession
- 4) Government travel card
- 5) Any Government IT equipment you may have at home
- 6) Your faculty/staff parking sticker must be removed from your vehicle(s)
- 7) PE Button

Yard access is now limited to public spaces only. Access to non-public USNA offices or facilities is no longer authorized.

Your IT account has been terminated.

Any personal items in your office will be packaged and available for pick up in Halligan Hall. You will be notified when those items are ready for pick up. If there is a specific item in your office which you believe may be confused with Government property, please notify Mr. Parks and he will ensure that it is returned to you.

Your annual leave will pay out in your final paycheck.

Please contact the Civilian Benefits Center (CBC) at [REDACTED] with any questions regarding your civilian benefits (FEGLI, FEHB, retirement information, TSP, FEDVIP, etc). The CBC is open M-F 7:30am-7:30pm, with the exception of Federal Holidays.

NOTICE TO FEDERAL EMPLOYEE ABOUT UNEMPLOYMENT INSURANCE

This form has been given to you because (1) you have been separated from your job, or (2) you were placed in a nonpay status, or (3) your records have been transferred to a different payroll office.

Unemployment insurance (UI) for Federal workers. When unemployed, Federal workers may be entitled to UI benefits similar to those of workers in private industry. If you become unemployed or are in a nonpay status and want to FILE A CLAIM, go to the nearest LOCAL PUBLIC EMPLOYMENT SERVICE OFFICE of the STATE EMPLOYMENT SECURITY AGENCY to register for work and file your claim for UI. Your ELIGIBILITY for UI CANNOT be determined until AFTER you file a claim. DO NOT DELAY filing a UI claim; if you wait, your unemployment benefits may be reduced or you may not qualify for any benefits.

To help EXPEDITE your claim, take THIS FORM with you, your SOCIAL SECURITY ACCOUNT NUMBER CARD, the OFFICIAL NOTICE of your most recent SEPARATION or of your present NONPAY status (Standard Form 50 if available), EARNINGS and LEAVE statements, or similar documents that indicate you were employed by a Federal agency.

3 Digit Identification FEDERAL AGENCY	CODE NO. 423-0003	To be completed by the <i>Federal Agency:</i> Contact Name/Office [REDACTED] Telephone No. <i>(include area code)</i> [REDACTED]
Department of the Navy Manpower, Personnel, Training & Education (MPT&E) Naval Support Facility - Arlington Civilian Human Resources Office 701 S. Courthouse Rd, 4R095 Arlington, VA 22204		

FEDERAL AGENCY will insert in the box:

1st line--Parent Federal Agency
Name and 3 digit code number
2nd line--Major Component (if any)
3rd and 4th line--complete address to which all forms pertaining to a claim should be sent (ES-931, 931A, 934, 936, and notices of appeal, hearings, and determinations)

KEEP THIS FORM and TAKE IT WITH YOU if you file a UCFE/UI claim for unemployed Federal workers provided by Federal law (U.S. CODE, Title 5, Chapter 85). For more information about UCFE/UI, read the REVERSE SIDE of this form.

NSN 7540-00-634-3964

STANDARD FORM 8 (Rev. 6/87)
Prescribed by Dept. of Labor
20 CFR 609

8-106

UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES (UCFE) PROGRAM UNEMPLOYMENT INSURANCE (UI) FOR FEDERAL WORKERS

TAKE THIS FORM WITH YOU IF YOU GO TO FILE A CLAIM

GENERAL INFORMATION:

1. WHO WILL PAY UNEMPLOYMENT BENEFITS?

If you are eligible, you will be paid by a State employment security agency under the provisions of its unemployment insurance (UI) law. The amount of your regular weekly benefits and the period for which benefits will be paid will generally be determined by the law of the State in which you had your last Official Duty Station. This Duty Station will be printed on your final "Notification of Personnel Action", SF-50. If you have received all the regular benefits for which you are eligible, you may, under certain circumstances, become eligible for additional weeks of extended benefits; check with a State local office official. If your last duty station was outside the United States, you will not be eligible until you return to the United States, including the District of Columbia, Puerto Rico, and Virgin Islands. Your benefit rights will then be determined under the law of your State of residence.

UCFE/UI for unemployed Federal workers is paid from U.S. Government funds. No deductions were taken from your pay to finance these benefits.

2. UNDER WHAT CONDITIONS WILL I BE ELIGIBLE?

All State UI laws require that:

- a. You must be unemployed, able to work, and available for suitable work; (In some cases, you may be eligible if you are employed less than full time);
- b. You must register for work and file a claim at a local public employment service/UI claim office;
- c. You must continue to report to the office as directed; and
- d. You must have had a certain amount of employment/wages within a base period of 1 year specified in the State law and have been separated through no fault of your own.

All State UI laws will deny you benefits for such reasons as:

- a. Quitting your job voluntarily without good cause or being discharged for misconduct connected with work; or
- b. Refusing an offer of a suitable job without good cause.

Some State UI laws deny or reduce UI benefits for certain types of payments you may receive (retirement, severance, and/or lump-sum amount for unused, accrued annual leave).

3. DO I HAVE THE RIGHT OF APPEAL?

Yes. If a determination is made denying you benefits, you have the right to appeal as provided in the applicable State law.

4. ARE THERE ANY PENALTIES?

Yes. If you willfully makes a false (fraudulent) claim, you may be fined, imprisoned, or both. If you make a mistake in giving information when you file your claim, notify the local UI claims office as soon as you discover the mistake; prompt notification may avoid a penalty.
(The above statements are issued for general information; they do not have the effect of law, regulation, or ruling).

IF YOU BECOME REEMPLOYED and have been collecting UCFE/UI benefit payments, it is your RESPONSIBILITY to notify the local office, in writing, to discontinue paying benefits now that you are employed. Failure to do so may result in a *penalty such as a fine, imprisonment, or both.*